IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1837 OF 2004

Shrikant Nagoba Kale ... Petitioner

versus

State of Maharashtra ... Respondent

...

Smt. Anamika Malhotra, for the Petitioner, amicus curiae.

Mr.V.B. Konde Deshmukh, A.P.P. for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

28th February 2005

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Konde Deshmukh, A.P.P., waives notice for the Respondent. As short question is involved, petition is taken up for final disposal forthwith by consent.

2. This petition takes exception to the order passed by the Deputy Inspector-General of Prisons dated 15th March 2004, rejecting the Petitioner's application for furlough leave. The Petitioner has been arrested in connection with offence punishable with sentence of life and is undergoing that sentence since 21st September 2001. Petitioner's request has been rejected by the appropriate authority on the sole reasoning that if he is released, there is danger to the prosecution witnesses and the Petitioner may engage in criminal activity.

3. However, after hearing Counsel for the parties and perusing the report, which was made available by the learned A.P.P., it is seen that the ground as noted in the impugned order cannot be sustained. Assuming that the authority is justified in observing that there is apprehension to the prosecution witnesses, this reason clearly overlooks the fact that the witnesses are residents of village Shivnoor, which is in Karnataka State and at least 200 Kms. away from the place where the Petitioner will ordinarily

reside if released on furlough leave. The Petitioner in his application has clearly mentioned that, if released, he will stay at Jat, District Sangli, during the leave period. Moreover, the apprehension can be taken care of by imposing strict condition on the Petitioner requiring him to attend the concerned police station at and post taluka Jat, where he would ordinarily reside during his leave period on daily basis. Insofar as the second reason recorded by the competent authority is concerned, that also will be taken care of by the condition requiring the Petitioner to report daily to the nearest police station during the stay at and post taluka Jat, district Sangli.

4. Accordingly, the order, which is impugned in this petition is set aside. Instead, the competent authority is directed to grant furlough leave to the Petitioner as per rules by imposing strict conditions including the condition requiring the Petitioner to report to the nearest police station at and post taluka Jat, district Sangli, during his stay at that place to avail of the leave period. Petition succeeds on the above

terms.

5. As this petition is filed through jail, copy of this order be forwarded to the Petitioner, who is presently in jail.

6. Court expresses word of appreciation for the assistance given by Smt. Anamika Malhotra, as amicus curiae.

(A.M.KHANWILKAR,J.)